HARVARD LAW REVIEW.

Published monthly, during the Academic Year, by Harvard Law Students.

SUBSCRIPTION PRICE, $2 50 PER ANNUM. . . . . 35 CENTS PER NUMBER.

THE LAW SCHOOL. — During the past year no instruction was given in the School on procedure under the New York Code. This year a course of lectures on the subject was announced in the Catalogue, to occupy not less than thirty hours. The course is now being given under the charge of Mr. Francis C. Huntington, LL. B. '91, of New York City.

THE LAW SCHOOL LIBRARY. — During the last month gratifying progress was made in securing Reports for the library. The Reports of the following States were purchased: Colorado, Dakota (Territory), North Dakota, South Dakota, Idaho, Kentucky, Mississippi, Missouri, Montana, New Hampshire, Rhode Island, Tennessee, Utah, Vermont, and Washington.

This is in pursuance of the plan, decided upon three years ago, to have two complete collections of Reports in the stack-room; and the rapid increase in the number of students in the School has shown the duplication to be urgently needed. It is hoped that, by the end of the year, nearly all the Reports required will have been secured.

BY WHOM SHALL A STATE CONSTITUTION BE ADOPTED? — The recent constitutional convention in South Carolina pronounced its constitution to be in force, as the fundamental law of the land, without submitting it to a popular vote. The action is rare enough to call for comment. In none of the Northern or Western States, since the adoption of the earliest constitutions, has a constitution been promulgated without a ratification by the people. In all but two of the Southern States, the practice of withholding a constitution from the people has been abandoned, at any rate since 1865. The two exceptions are South Carolina and Mississippi. Even in those States, some constitutions have been submitted to a popular vote, — three out of six in the case of Mississippi, and one out of five in the case of South Carolina.

It would seem perfectly clear that if a legislature directed a convention to submit its work to the people for ratification, the convention would be bound to obedience. The consent of the legislature is necessary in order that a convention may be lawfully held, and this consent may be given conditionally. The terms of the legislative "call," therefore, are binding on the convention. (*Wells* v. *Bain*, 75 Pa. St. 39.) This view is bitterly attacked *obiter*, in *Sproule* v. *Fredericks*, 69 Miss. 898; but the position of the court appears to be untenable. When a legislature, on the other hand, expressly dispenses with submission to a popular vote, it would seem equally clear that the convention had the right to declare its constitution in force. In the third and most difficult case, when the legislature is silent as to the submission of the convention's work to the people, the duty and the power of the convention seem to be at variance. No one should question that, in subservience to the best interests of the people, the convention ought to submit its constitution to a popular vote; otherwise, as is pointed out in Jameson on Constitutional Conventions (4th ed., §§ 410, 411), the people are at the mercy of a despotic single chamber. Nevertheless, the late South Carolina convention and the Mississippi convention of 1890 (6 HARVARD LAW REVIEW, 56, 57) afford but two examples of a course of action frequently pursued in constitutional conventions prior to 1865. Therefore, where the legislative call is silent as to the necessity of submitting a constitution to confirmation or rejection by a popular vote, it is now too late, in view of historical precedent, to deny the power of a convention to put its constitution in force without submitting it to the people.

CONTRADICTION OF DYING DECLARATIONS. — A note in the Recent Cases last month (9 HARVARD LAW REVIEW, 432) expressed a doubt as to the soundness of admitting previous statements of the deceased in contradiction of his dying declarations. The New York Law Journal, in its issues of January 31 and February 3, criticises this note as "unconvincing and inconclusive," and argues strongly for the admission of the statements. A word of explanation may not be out of place here. These notes on recent cases are not intended to be either convincing or conclusive; their purpose is to call attention to interesting decisions, and to point out possible objections, if any appear. They are suggestive rather than dogmatic. In the second place, the position taken in the note is worthy of consideration. The argument of the court and of the Journal is directed, in fact, against the weight of dying declarations as evidence, and in this point of view is forcible. But the logical result from this would seem to be to exclude the evidence, or to call the attention of the jury to its weakness. It may be questioned whether, because an unsatisfactory piece of evidence has been admitted, other unsatisfactory evidence should therefore be allowed to impeach it. The objection is not more technical than other matters of evidence, but is based on the general rule excluding hearsay except in special cases. The argument in favor of the evidence based on the loss of cross-examination proves too much, for it would apply to all cases of hearsay. That based on the peculiar nature of dying declarations is stronger, and perhaps should prevail. Evidence against the credibility of the declarant is in general admissible, and as a question of practice the decision may be a wise one. Nevertheless, the considerations here set down seem to make it a doubtful case. *People* v. *Lawrence*, 21 Cal. 658, mentioned by the